

CHAPTER 5 – COMPENSATORY WETLAND REPLACEMENT AND THE PENNSYLVANIA WETLAND REPLACEMENT PROJECT (FUND)

The requirements for mitigation development and monitoring of compensatory wetland replacement sites have received widespread attention within the Corps and the scientific community, and mitigation standards have recently begun to emerge in the regulatory arena. Compensatory wetland replacement is an important component of the PASPGP effectiveness in meeting the ‘no net loss’ goals of the Federal program.

One of the goals of this report is to determine if appropriate and effective mitigation, consistent with standards of the Federal program, is accomplished under the PASPGP, in a manner similar to pre-PASPGP. However, given the timeframes involved in the development and assessment of mitigation success, we could not present a comprehensive analysis of mitigation in this report. A brief discussion of the rationale for including the Pennsylvania Wetland Replacement Project (Fund) into the PASPGP and the manner in which it can be appropriately incorporated into the PASPGP is provided.

The issue has been raised that many of the wetland impacts accruing from small projects had been sanctioned through the NWP process without any mitigation requirement. However, a Corps survey in 1996 provided some limited findings indicating that mitigation was being accomplished through the NWP program. Specifically, in FY 1995, under NWP 26, the Corps authorized 6,005 acres of fill and required 5,941 acres of mitigation, nationally. Of these numbers, 112 acres of fill were authorized and 92 acres of mitigation were required by the Baltimore, Philadelphia, and Pittsburgh Districts combined. The Philadelphia District compiled its own similar data for FY 1994 and found that 28.25 acres of wetlands were impacted under NWP 26, while mitigation was provided for 24.39 acres. Under all the NWPs combined that same year, the Baltimore District authorized 119 acres of wetlands fill while requiring 93 acres of compensatory mitigation.

PADEP Statistics indicate that during the calendar year 1997, PADEP issued permits state wide, resulting in impacts to 100 acres of wetlands, and required 193 acres of compensatory wetland replacement.

Detailed statistics have not been available regarding the success of small wetland replacement sites. The Corps and PADEP have been in agreement that often,

because of inappropriate site conditions, poor designs, inability to monitor, and exorbitant per-acre costs, small replacement efforts do not always result in fully functioning wetlands. Additionally, a PADEP four-year study of 69 wetland replacement sites documented that approximately 50% of the wetland replacement sites under a half-acre were unsuccessful. The consensus in Pennsylvania indicates that true functional replacement was probably not being achieved. Therefore, the use of an in lieu fees program (Fund) or a wetland bank for small and unavoidable impacts has generally been viewed as a plus for aquatic resource compensation.

After several months of internal development by PADEP, and thirty days for public comment, the Pennsylvania Wetland Replacement Project (Fund) became operational in March of 1996. The Fund provides a mechanism by which PADEP will assist permit applicants in meeting the compensatory wetland replacement requirements associated with Chapter 105 Water Obstruction and Encroachment Permits and the PASPGP. After a complete and thorough application review it may be determined that some applicants are eligible to contribute financially to the Fund. PADEP uses the money collected through the fund to restore larger wetland systems.

As the Fund is a relatively new process, preliminary fund data is being collected through PADEP's annual monitoring of all fund sites. In addition, PADEP has provided some statistics regarding acres restored and cost per acre, which may be found in the Appendix. This effort is ongoing and data will be made available on a continuing basis.

Creation of the Fund was a significant change to the State's program. The Fund was created after implementation of the PASPGP, and to date, the PASPGP has not been modified to incorporate the Fund. The Corps supports the use of the Fund for projects that qualify, and recommends that it be incorporated into the PASPGP subject to the "Recommendations", listed below.

One process difference related to mitigation, is the Corps requirement for compensatory mitigation for open water impacts, including impacts to rivers, streams, lakes and ponds. Compensatory mitigation should be required to compensate for unavoidable impacts to these aquatic resources for some PASPGP authorizations. "Recommendations" to address these mitigation requirement differences are provided below.

Recommendations:

1. In order to include the Fund as a component of the PASPGP, a Standard Operating Procedure document that meets the needs and requirements of both the Federal and the State programs and encourages participation of the resource agencies in project development should be finalized and incorporated into the PASPGP. The incorporation of the Fund into the PASPGP needs to be advertised through a Corps Public Notice, for public comment.
2. In order to accomplish the task outlined in recommendation #1, each Corps district should designate one permit representative to coordinate Fund mitigation projects located within his/her regional territory.
3. Training sessions can be held to discuss Federal mitigation requirements for open water and stream channel impacts, and to discuss various mitigation options.
4. Coordination of all pre-application meetings would also allow for the Corps and other Federal review agencies to discuss open water compensation requirements with applicants and PADEP evaluators.